

Translating the ICDR Int'l Rules into Other Languages

ICDR DEVELOPMENTS

BY STEVEN K. ANDERSEN AND ANÍBAL SABATER

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While much international business is being conducted in English, a greater percentage takes place in other languages. Even if a contract for a cross-border transaction is written in English, you can be sure that much of it was negotiated in the language of the place where the project is located. For these reasons, the International Centre for Dispute Resolution (ICDR) formed a Translation Committee in July 2007 to coordinate the process of translating the ICDR International Mediation and Arbitration Rules into several languages. The goal is to provide a consistent set of translations in order to promote the knowledge and use of these rules worldwide.

The ICDR determined that the members of the Translation Committee should be highly diverse (not only in terms of their nationality and language fluency, but also in practical experience); and sensitive to (and have a good understanding of) different legal traditions. This was necessary to ensure that the letter and spirit of the ICDR rules would be accurately conveyed to users with varied legal backgrounds.

The individuals invited to sit on that committee are Michelangelo Cicogna (Studio Legale De Berti Jachia Milan office), Jessica Fei (Wong Partnership, Shanghai), Mauricio Gomm dos Santos (Buchanan Ingerson & Rooney, Miami), Jean-Pierre Harb (Baker & McKenzie, Paris office), Alexis Mourre (Castaldi Mourre et Partners, Paris office), Thomas Pieper (Chadbourne & Park L.L.P., New York Office), author Aníbal Sabater, and two members of the ICDR (Christian Alberti and author Steven K. Andersen). Additional committee members are expected to be appointed to assist with the preparation of new translations.

More than 15 senior international arbitration practitioners, including several ICDR representatives, have been assisting the committee, either by providing initial draft translations or revising and commenting on those already existing.

The ICDR had previously translated the International Arbitration and Mediation Rules into Portuguese and Spanish. It had also translated the Arbitration Rules into Chinese. Since changes have been made to the ICDR rules since these translations were released, the Translation Committee updated these translations, making them consistent with the current rules. In June, the ICDR released the updated translations by posting them on the ICDR Web site (www.icdr.org). The committee has also completed first time translations of the arbitration and mediation rules into Arabic, French, German and Italian. The French translation has been finalized and is available on the ICDR Web site. It has not yet been determined when or if the ICDR rules will be translated into other languages.

Having the ICDR rules translated into so many languages is a major achievement for an arbitration institution. It allows the business and ADR communities where these languages are spoken to read the rules themselves and learn about mediation and arbitration at the ICDR. However, the availability of these translations does not alter the fact that the English version of the ICDR rules remains the official text for questions

of interpretation.

In preparing new translations and translation updates, the committee and those assisting it have been guided by four overriding considerations. First, the translations must be user-friendly and preserve as much as possible the agile style of the original. Thus, concise sentences are preferred to wordier alternatives.

Second, following the example set in the original version of the ICDR rules, translators have been cautioned to avoid using concepts too closely associated with the civil or common law tradition and to use terms that would be understandable without regard to the reader's legal tradition.

The third consideration was to make the translations as dialect-neutral as possible. Dialect-neutrality was particularly hard to achieve with the Portuguese translation, since sharp distinctions exist between Portuguese as spoken in Portugal and Brazil.

The fourth goal was to harmonize the translations, not only with the official English version, but also with each other.

Rule Clarifications

During the translation projects, the Translation Committee identified a number of rules that deserved revision or clarification. For example, it noticed that the terms "mediation session" and "mediation conference" were used interchangeably in the International Mediation Rules to refer to meetings between the mediator and the parties. To eliminate this

inconsistency, the committee decided to replace the term “mediation session” and replace it with the term “mediation conference” in the official English rules and in all translations. These changes affect Articles 7(5), 8(2) and 9 of the International Mediation Rules.

As frequently happens in projects of this nature, the Translation Committee faced more than a few linguistic challenges. One challenge involved what linguists refer to as “false friends.” These are words that look the same in different languages but have a different meaning. To illustrate, *ex parte* means one thing in English and another in French and Spanish. In English it is defined by *Black’s Law Dictionary* to mean “by or for one side or one party only.” An *ex parte* communication or application is a communication or application made by one party to a court or arbitrator without notice to the other party. However, in Spanish and French-speaking countries, *ex parte* does not imply commu-

nication or action on behalf of one party only without notice to the other. It means that an application has been made to a court or arbitrator. It could be by one or both parties.

To remedy any confusion, the Translation Committee recommended that when the term *ex parte* is used in the English version of the ICDR rules (as in Article 7(b) of the International Mediation Rules and Article 7(2) of the International Arbitration Rules), translations into other languages should make clear that the rules refer to communications between one party and the mediator or arbitrator, without notice to or involvement by the other party.

Another linguistic challenge the committee faced was how to translate words that have no clear and accepted meaning in the language. In other words, the problem is not that a word has “false friends,” it appears to have no friends. An example is the English word “disclosure,” which frequently appears in arbitration rules, pleadings,

and arbitration awards. For English speakers, a “disclosure” is information revealed that the hearer may not have known. (The verb “to disclose” is the act of making a disclosure.) But there is no identical word for this concept in most Romance languages. The Translation Committee received suggested translations, one of which was “revelación” in Spanish (meaning revelation) and “révélation” in French (meaning exposure). Another suggestion was the less precise but more widely used “comunicación” (Spanish) and “communication” (French). The committee ultimately decided to use “révélation” and “revelación” for the Spanish and French translations because these terms, although not widely used or accepted analogues for “disclosure,” better capture the meaning of that term.

Readers should keep an eye on the ICDR Web site to obtain the latest available translations. They can also obtain them by calling the ICDR at 212.484.4181. ■

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